

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

DEBRA TROMBLEY,

Plaintiff,

vs.

Civil Action No.
1:05-CV-1480 (DEP)

MICHAEL J. ASTRUE, Commissioner of
Social Security,¹

Defendant.

APPEARANCES:

OF COUNSEL:

FOR PLAINTIFF

BUCKLEY MENDLESON LAW FIRM
29 Wards Lane
Albany, New York 12204

IRA MENDLESON, III., ESQ.

FOR DEFENDANT

OFFICE OF GENERAL COUNSEL
Social Security Administration
26 Federal Plaza - Room 3904
New York, NY 10278

SIXTINA FERNANDEZ, ESQ.

DAVID E. PEEBLES
U.S. MAGISTRATE JUDGE

¹ Plaintiff's complaint, which was filed on November 29, 2005, named Jo Anne B. Barnhart, the former Commissioner of Social Security, as the defendant. On February 12, 2007, Michael J. Astrue took office as Social Security Commissioner. He has therefore been substituted as the named defendant in this matter pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure, and no further action is required in order to effectuate this change. See 42 U.S.C. § 405(g).

ORDER

Currently pending in this action, in which plaintiff seeks judicial review of an adverse administrative determination by the Commissioner, pursuant to 42 U.S.C. § 405(g), are cross-motions for judgment on the pleadings.² Oral argument was conducted in connection with those motions on March 10, 2008 during a telephone conference which was both digitally recorded, and at which a court reporter was also present. At the close of argument I issued a bench decision in which, after applying the requisite deferential review standard, I found that the Commissioner's determination did not result from the application of proper legal principles and is not supported by substantial evidence, providing further detail regarding my reasoning and addressing the specific issues raised by the plaintiff in her appeal.

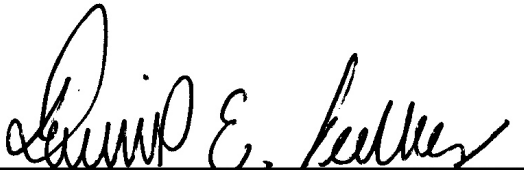
After due deliberation, and based upon the court's oral bench decision, which is incorporated herein by reference, it is hereby

² This matter, which is before me on consent of the parties pursuant to 28 U.S.C. § 636(c), has been treated in accordance with the procedures set forth in General Order No. 18 (formerly, General Order No. 43) which was issued by the Hon. Ralph W. Smith, Jr., Chief United States Magistrate Judge, on January 28, 1998, and subsequently amended and reissued by Chief District Judge Frederick J. Scullin, Jr., on September 12, 2003. Under that General Order an action such as this is considered procedurally, once issue has been joined, as if cross-motions for judgment on the pleadings had been filed pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

ORDERED, as follows:

- 1) Plaintiff's motion for judgment on the pleadings is GRANTED.
- 2) The Commissioner's determination that plaintiff was not disabled at the relevant times, and thus is not entitled to benefits under the Social Security Act, is VACATED.
- 3) The matter is hereby REMANDED to the Commissioner, without a directed finding of disability, for further proceedings consistent with this determination.
- 4) The clerk is directed to enter judgment, based upon this determination, remanding the matter to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g) and closing this case.

Dated: March 12, 2008
Syracuse, NY

A handwritten signature in black ink, appearing to read "David E. Peebles", written over a horizontal line.

David E. Peebles
U.S. Magistrate Judge